

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
June 6, 2023 Session

FILED
06/12/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DEANTHONY D. HART

Appeal from the Circuit Court for Henderson County
No. 19-273-1 Roy B. Morgan, Jr., Judge

No. W2022-00280-CCA-R3-CD

The Defendant, DeAnthony D. Hart, challenges the legal sufficiency of the evidence supporting his convictions for the unlawful possession of cocaine, the unlawful possession of a firearm, and evading arrest. On our review, we respectfully affirm each of the Defendant’s convictions. However, we remand the case for entry of corrected judgments showing the merger of offenses ordered by the trial court.

Tenn. R. App. P. 3 Appeal as of Right;
Judgments of the Circuit Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which J. ROSS DYER and JOHN W. CAMPBELL, SR., JJ., joined.

M. Todd Ridley, Assistant Public Defender – Appellate Division (on appeal), Franklin, Tennessee, and Marcus A. Lipham, Jackson, Tennessee (at trial), for the appellant, DeAnthony D. Hart.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Joshua B. Dougan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On May 15, 2019, Sergeant John James from the Henderson County Sheriff’s Department received a dispatch regarding a potential domestic violence incident. Sergeant James and Deputy Bradley Greer went to Guy B. Amis Park in Lexington and met with the person who reported the domestic assault. This person provided a description of the

Defendant. Sergeant James then sent Deputy Greer to Gore Park where he believed the Defendant might be located.

Dressed in his uniform, Deputy Greer arrived at Gore Park and noticed a man holding a black bag in the middle of the road. One of the man's hands was holding the bag, and the other hand was inside the bag. The deputy got out of his car and approached the man. When Deputy Greer requested the man's name, the man identified himself as "Jonathan." The deputy then asked "Jonathan" if he knew "a Mr. Hart," and the man pointed to a mobile home and said that Mr. Hart lived there.

Deputy Greer returned to his patrol car and began searching for a white Equinox car. While searching, he observed "Jonathan" run towards the back of the mobile home park, where a white Equinox picked him up. The vehicle drove away, and Deputy Greer attempted to stop it by standing in the road. However, the driver did not stop, and Deputy Greer was forced to jump out of the way to avoid being hit.

Deputy Greer pursued the Equinox, activating the emergency lights and sirens of his patrol car. The chase led them through several roads until the vehicle finally pulled over. The Defendant quickly exited the car with the black bag and fled on foot. Deputy Greer got out of his patrol car and chased the Defendant around some houses and into the woods, yelling for the Defendant to stop. After the Defendant fell trying to get over a fence, Deputy Greer apprehended and arrested him. At the time of his arrest, the Defendant no longer had the black bag.

Meanwhile, back at Guy B. Amis Park, Sergeant James heard over the radio that Deputy Greer was pursuing a suspect, and the sergeant left to join the deputy. When Sergeant James arrived on the scene, he saw Deputy Greer bringing the Defendant back across a field.

The officers placed the Defendant in the back of Sergeant James's patrol car, and they retraced the path of the chase. Along this path, the officers found the black bag containing narcotics, small baggies, and \$185 in cash. In addition, the bag held a loaded and cocked handgun. Subsequent testing confirmed that the narcotics in the bag were approximately 90 grams of methamphetamine and 20 grams of cocaine. The officers also found the Defendant's parole identification card in the bag, but they returned it to the Defendant in case he later "bonded out."

Relevant to this appeal, the Henderson County grand jury charged the Defendant with several offenses, including criminal impersonation, evading arrest, possession of drug paraphernalia, possession of .5 grams or more of cocaine with the intent to sell, possession of .5 grams or more of cocaine with the intent to deliver, and two counts of unlawful

possession of a firearm during the commission of a dangerous offense, specifically each of the possession of cocaine offenses.

Following a jury trial, the Defendant was convicted of each of the charged offenses. The trial court sentenced the Defendant as a Range I, standard offender to ten years for each Class B felony possession of cocaine conviction, three years for each Class D felony firearms conviction, eleven months and twenty-nine days for each Class A misdemeanor conviction for possession of drug paraphernalia and evading arrest, and six months for the Class B misdemeanor criminal impersonation conviction. After the trial court merged the two controlled substance convictions and the two firearms convictions, it sentenced the Defendant to a total effective sentence of thirteen years. The trial court entered the judgments on September 22, 2021.

The Defendant's counsel did not file a motion for a new trial or a notice of appeal. On March 4, 2022, the Defendant filed a pro se notice of appeal and requested that the late filing be excused. This Court granted the Defendant's request and appointed appellate counsel to represent him.

In this appeal, the Defendant challenges only the sufficiency of the evidence supporting his convictions for possession of cocaine with intent to sell or deliver, possession of a firearm, and evading arrest. Upon our review, we respectfully affirm the judgments of the trial court.

STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that “the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). In this appeal, the Defendant challenges only whether his convictions are supported by legally sufficient evidence. “The standard for appellate review of a claim challenging the sufficiency of the State’s evidence is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “The standard of review is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (internal quotations and citations omitted).

On appeal, this Court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (citing *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). Moreover, the trier of fact, and not this Court, resolves “all questions as to the credibility of trial witnesses, the weight and

value of the evidence, and issues of fact raised by the evidence.” *State v. Lewter*, 313 S.W.3d 745, 747 (Tenn. 2010). “Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

ANALYSIS

A. POSSESSION OFFENSES

The Defendant first challenges his convictions for possession of .5 grams or more of cocaine with intent to sell; possession of .5 grams or more of cocaine with the intent to deliver; possession of a firearm with the intent to go armed during the commission of a dangerous offense, namely possession of cocaine with the intent to sell; and possession of a firearm with the intent to go armed during the commission of a dangerous offense, namely possession of cocaine with the intent to deliver.¹ The Defendant does not challenge each of the elements of the respective offenses but instead argues that “the State failed to establish that Mr. Hart possessed, either actually or constructively, the cocaine and firearm.” More specifically, the Defendant asserts that the State failed to show that the Defendant possessed the black bag that contained these items. We respectfully disagree.

Under Tennessee law, “a possession element may generally be established by showing actual or constructive possession.” *State v. Fayne*, 451 S.W.3d 362, 370 (Tenn. 2014). As our supreme court has acknowledged, “[w]hile actual possession refers to physical control over an item, constructive possession requires only that a defendant have ‘the power and intention . . . to exercise dominion and control over’ the item allegedly possessed.” *Id.* (quoting *State v. Robinson*, 400 S.W.3d 529, 534 (Tenn. 2013)) (omission in original). Stated another way, “constructive possession is the ability to reduce an object to actual possession.” *State v. Ross*, 49 S.W.3d 833, 845-46 (Tenn. 2001) (quoting *State v. Transou*, 928 S.W.2d 949, 955-56 (Tenn. Crim. App. 1996)).

In this case, the evidence viewed in a light most favorable to the State clearly shows that the Defendant possessed the black bag and, therefore, possessed the items in that bag, including the firearm and cocaine. Deputy Greer stated that when he first met the Defendant at Gore Park, the Defendant was carrying the black bag and had his hand inside

¹ Because the Defendant does not challenge the sufficiency of the evidence sustaining his other convictions for possession of drug paraphernalia or criminal impersonation, we do not address those convictions further. *See* Tenn. R. App. P. 13(b) (“Review generally will extend only to those issues presented for review.”).

the bag. Later, the deputy saw the Defendant with the same bag as he exited a white Equinox car and started running into the woods.

When the Defendant was finally apprehended, he no longer had the bag. After apprehending the Defendant and putting him in a patrol car, Deputy Greer and Sergeant James retraced the Defendant's steps and found the black bag. The bag contained the cocaine, the firearm, and the Defendant's parole identification card.

The deputy's testimony that he saw the Defendant possessing the black bag constitutes legally sufficient evidence to sustain the conviction. "[T]he jury obviously accredited the testimony of the officers, as was its prerogative." *State v. Ziberia Carero*, No. E2018-00684-CCA-R3-CD, 2020 WL 550205, at *10 (Tenn. Crim. App. Feb. 3, 2020), *perm. app. denied* (Tenn. July 17, 2020). Under these circumstances, the proof is sufficient for a reasonable jury to find that the Defendant possessed the black bag as well as the items in the black bag. Moreover, the sufficiency of the evidence sustaining the conviction is reinforced by the discovery of the black bag along the path of the Defendant's flight, as we have recognized in other cases. *See, e.g., State v. Sterling White*, No. E2022-00279-CCA-R3-CD, 2022 WL 17413628, at *4 (Tenn. Crim. App. Dec. 5, 2022) (affirming conviction for constructive possession of a controlled substance, in part, when "Investigator Ogle and Officer Crump retraced the flight path and Officer Crump retrieved the pill bottle containing cocaine from underneath a trailer where Investigator Ogle had just watched the Defendant throw an item or items"), *no perm. app.*; *see also State v. Deshawn Wentz*, No. M2010-01668-CCA-R3-CD, 2011 WL 3654539, at *5 (Tenn. Crim. App. Aug. 19, 2011) ("That officer, however, lost sight of the defendant during a portion of his flight and other officers who searched the area immediately afterwards found 14.7 grams of cocaine strewn along the defendant's flight path. This was sufficient evidence from which a rational jury could reasonably infer that the drugs found belonged to the defendant.").

The Defendant argues that the State could not connect the bag to him because it did not present the bag at the trial or conduct any forensic testing for DNA or fingerprints. We respectfully disagree. A conviction is not undermined by a lack of DNA or fingerprint evidence if there is legally sufficient evidence of guilt otherwise. *See State v. Chew Cornelius Sawyer*, No. W2018-01267-CCA-R3-CD, 2019 WL 1560864, at *3 (Tenn. Crim. App. Apr. 10, 2019). As we have concluded, the State presented legally sufficient evidence to sustain the Defendant's possession convictions; therefore, the lack of DNA or fingerprint evidence does not affect our analysis.

Finally, the Defendant also claims that the State may not link the bag to him through the officer's "hearsay testimony" about his parole identification card because the card was not presented at the trial. Again, we respectfully disagree. The Defendant did not object to the officer's testimony about his parole identification card during the trial, and he asked

Deputy Greer about the card on cross-examination. As such, even if the information on the card somehow constituted inadmissible hearsay—and we decline to decide that issue here—the Defendant’s failure to object to that testimony enabled the jury to “consider that evidence for its ‘natural probative effects as if it were in law admissible.’” *State v. Smith*, 24 S.W.3d 274, 280 (Tenn. 2000) (quoting *State v. Harrington*, 627 S.W.2d 345, 348 (Tenn. 1981)). We conclude that the evidence is legally sufficient for each possession conviction, with or without proof of the Defendant’s parole identification card.

Accordingly, we affirm the Defendant’s convictions for possession of cocaine with intent to sell and to deliver and for possession of a firearm during the commission of each dangerous offense.

B. EVADING ARREST

The Defendant next challenges the legal sufficiency of the evidence supporting his conviction for evading arrest. As charged in this case, the offense of evading arrest required the State to prove beyond a reasonable doubt that (1) the defendant intentionally fled from a person he knew to be a law enforcement officer; and (2) the defendant knew the officer was attempting to arrest him. Tenn. Code Ann. § 39-16-603(a) (2018) (since amended).

The Defendant argues that when the chase started, Deputy Greer did not have probable cause to arrest the Defendant for any crime. Citing *State v. Holbrooks*, 983 S.W.2d 697, 702 (Tenn. Crim. App. 1998), the Defendant argues that the deputy “certainly had reason to be suspicious” but that suspicion “is not enough to trigger criminal liability under Tenn. Code Ann. § 39-16-603(a)(1).”

For its part, the State argues that the Defendant waived this issue, as he “never sought to challenge the basis for his arrest,” and, consequently, “the State never presented any of the damaging evidence about the domestic assault and why the officers went to find [the Defendant]” in the first instance. The State also argues that probable cause is not an element of the offense of evading arrest and that the proof is otherwise sufficient to support the conviction. Again, we agree with the State.

The State is not required to prove the legality of the attempted arrest or the presence of probable cause as elements of the misdemeanor offense of evading arrest. Instead, the legality of the arrest itself is a general defense to the crime of evading arrest. *See* Tenn. Code Ann. § 39-16-603(a)(2) (“It is a defense to prosecution under this subsection (a) that the attempted arrest was unlawful.”); *State v. Jeffrey Lloyd Locke*, No. M2021-01437-CCA-R3-CD, 2022 WL 4546025, at *3 (Tenn. Crim. App. Aug. 9, 2022), *perm. app. denied* (Tenn. Jan. 11, 2023) (“It is a statutory defense to prosecution for felony evading

arrest that the attempted arrest was unlawful.”). The proof must fairly raise the existence of this defense, and once the defense is raised, the State has the responsibility to disprove its application beyond a reasonable doubt. *See* Tenn. Code Ann. § 39-11-203(c), (d).

However, in this case, the legality of the attempted arrest was not fairly raised by the evidence, even when considering it in the light most favorable to the Defendant and drawing all reasonable inferences in his favor. *State v. Benson*, 600 S.W.3d 896, 905 (Tenn. 2020). The Defendant did not file a pretrial motion seeking to challenge the legality of the arrest. At trial, neither party questioned the officers about the original domestic assault complaint or the existence of probable cause for the Defendant’s arrest based on that complaint. The Defendant did not raise this defense in his motion for acquittal following the State’s presentation of evidence. And the legality of the arrest was not argued to the jury. In other words, the defense was simply not an issue at trial.

In response, the Defendant argues that this Court’s decision in *State v. Holbrooks*, 983 S.W.2d 697 (Tenn. Crim. App. 1998), recognizes that the State has the burden of proving the legality of the arrest and that the Defendant knew that the officer was attempting to place him under arrest. We respectfully disagree with the Defendant’s characterization of *Holbrooks*.

In *Holbrooks*, the officer was investigating possible drug activity in a public housing complex, and he approached a group of individuals who appeared to be playing a dice game. When the defendant and others noticed the officer, they ran from him, and the officer gave chase. When the officer caught up to the defendant, the officer further questioned the defendant and placed him under arrest for criminal trespass. *See id.* at 698-99.

Importantly, the issue in *Holbrooks* was whether the officer was attempting to place the defendant under arrest at the time the officer gave chase. In that context, we looked to the existence of probable cause to help determine the disputed issue of the officer’s intent. *See id.* at 702-03. Because “the officer lacked probable cause for an arrest,” and because “the officer had to ask a few questions to determine whether he could arrest the defendant for trespassing in the housing community,” we concluded that the officer “could not have been attempting to arrest the defendant[.]” *Id.* at 703. *Holbrooks* does not require the State to prove the legality of an attempted arrest as an element of the offense, and, consistent with the statute, a trial court need not instruct the jury on this issue where the evidence does not raise it.

Unlike *Holbrooks*, there was no dispute here that Deputy Greer was attempting to arrest the Defendant. The deputy attempted to stop the car in which the Defendant was traveling by standing in the road. When this tactic failed, the deputy chased the car with his emergency equipment activated, and he gave chase through the woods when the

Defendant fled on foot after his car stopped. In addition, when Deputy Greer caught up to the Defendant, he placed him under arrest immediately without further investigation.

Importantly, the Defendant does not contest that he intentionally fled from a uniformed police officer who was attempting to arrest him. Because the record does not contain evidence that fairly raises any question regarding the legality of the attempted arrest, the general defense of an unlawful arrest is not available to the Defendant. Consequently, we conclude that the evidence presented is legally sufficient to establish the essential elements of misdemeanor evading arrest beyond a reasonable doubt.

C. CORRECTION OF JUDGMENTS OF CONVICTION

On our own motion, we remand the case to the trial court for entry of corrected judgments of conviction to reflect the merged offenses. Following the jury's verdicts, the trial court merged the two convictions in Counts 7 and 8 for possession of cocaine, one with intent to sell and the other with intent to deliver. It also merged the convictions in Counts 5 and 6 for possessing a firearm during the commission of each dangerous felony offense.

Our supreme court has held that when offenses are merged, the "judgment document should indicate in the 'Special Conditions' box that the conviction merges with the greater conviction. To avoid confusion, the merger also should be noted in the 'Special Conditions' box on the uniform judgment document for the greater or surviving conviction." *State v. Berry*, 503 S.W.3d 360, 364 (Tenn. 2015).

In this case, the trial court correctly prepared separate judgments of conviction for each guilty verdict, following the guidance provided in *State v. Davidson*, 509 S.W.3d 156, 218 (Tenn. 2016). However, the judgments of conviction in Counts 5 and 6 and in Counts 7 and 8 do not indicate the mergers ordered by the trial court. Accordingly, on remand, the trial court is respectfully requested and ordered to correct the judgments of conviction to show the merger of these offenses in the "Special Conditions" box.

CONCLUSION

In summary, we hold that the evidence is legally sufficient to support the Defendant's convictions for possession of cocaine with intent to sell and deliver and for possession of a firearm during the commission of a dangerous offense. We also hold that the evidence is legally sufficient to support the Defendant's conviction for misdemeanor evading arrest. Accordingly, we respectfully affirm the Defendant's convictions, but

remand the case to correct the judgments of conviction to show the merged offenses ordered by the trial court.

TOM GREENHOLTZ, JUDGE